Carlisle Engineered Products, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, Petitioner. Case 7–RC–21333

April 28, 2000

DECISION AND DIRECTION

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

The National Labor Relations Board, by a three-member panel, has considered objections and determinative challenges in an election held June 25, 1998, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 90 for and 76 against the Petitioner, with 21 challenged ballots, a number sufficient to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, and has adopted the hearing officer's findings[1] and recommendations only to the extent consistent with this Decision and Direction.

The hearing officer found that 10 persons classified as processors and another classified as a process engineer were supervisors within the meaning of Section 2(11) of the Act because he concluded that they assign work to the Employer's operators, grant their time-off requests, have the authority to discipline them, and substitute at certain times for undisputed supervisors. He therefore recommended sustaining the challenges to ballots cast by these individuals. The Employer excepts, contending that these individuals do not exercise independent judgment with respect to any of the statutory indicia of supervisory status. For the reasons set forth below, we find merit in the Employer's exceptions.[2]

The Employer manufactures plastic component parts which are used in the automotive industry. The stipulated appropriate bargaining unit consists primarily of production and maintenance employees. The processors are experienced production equipment operators whose primary responsibilities include starting up production equipment, shutting the equipment down, and monitoring and adjusting the equipment to ensure that it is working properly. They also frequently perform manual production and repair functions.

Although several witnesses testified that the processors have assigned work and directed employees to change their duties, there is no evidence that the processors use independent judgment in exercising this authority. In general, it is admitted statutory supervisors who prepare work schedules before each shift specifying the machine and part each operator is to work on. The processors may direct operators to move to another machine or to sweep up if the processor needs to be adjusted or repaired. However, the processors' exercise of this authority to assign work is simply based on commonsense efficiency and job priorities set by the Employer. We find that their assignment of work on this basis is routine and insufficient to establish supervisory status.[3]

Furthermore, we find no support in the record for the hearing officer's finding that processors independently grant time off. The Petitioner introduced into evidence several leave request forms which were signed by processors under the heading "Advisor." The hearing officer credited the testimony of Plant Manager Allen Hibbler and Human Resources Manager Patti Carpenter-Shelly that the Employer's established policy is to grant time off to the first six eligible employees on each shift to request leave on a particular day. Thus, Hibbler and Shelly testified that employees submit leave request forms to processors, who sign the forms and then forward them to clerical Renee Gingell. Gingell checks the employees' time records to verify that they have leave available and she then signs, under the heading "Approval," the first six leave requests on each shift submitted for a particular day. She then forwards the leave requests to the employees' immediate supervisors for final approval and distribution back to the employees.

The hearing officer found inherently improbable the testimony that processors sign leave request forms merely to verify date of receipt and not to indicate approval. He noted that the employees could submit their requests directly to Gingell if a processor's signature was not required for approval. In so finding, the hearing officer overlooked the fact that the Employer operates three shifts a day, 7 days a week, and Gingell is not present throughout all shifts. Even assuming, however, that a processor's signature is required for approval, the record fails to establish that the processors' role in approving

[1] In the absence of exceptions, we adopt, pro forma, the hearing officer's recommendation to overrule the challenges to the ballots of Valerie Chambers, Vicki Ann Coon, Lynette Germaine, and Tina Turner.

[2] We note that in our discussion we shall refer to the employees collectively as processors, although employee Mark Lieber has the title of process engineer.

[3] *J. C. Brock Corp.*, 314 NLRB 157, 158 (1994); *Clark Machine Corp.*, 308 NLRB 555, 555–556 (1992); *Esco Corp.*, 298 NLRB 837, 839 (1990). In contending that processors have the same discretionary authority to assign work as admitted supervisors, our dissenting colleague posits a view of the processors' duties that the record does not support. He suggests that once original assignments have been set, the processors have unlimited authority to change them. The record, however, shows that a processor has occasionally directed an operator to move to another machine or to clean up in the single, limited circumstance dictated by the processor's need to adjust or to repair that operator's machine. Contrary to the dissent, this limited and routine assignment function is not comparable to the general assignment authority exercised by admitted supervisors when making initial work assignments.

Although the record is clear that employees are required to obey the processors' instruction to move to a different machine or to sweep up, the discipline for failing to obey emanates from the human resources manager and the employees' undisputed supervisor, not from the processor. As found below, the processors do not have authority to discipline employees. Cf. *J. C. Brock Corp.*, 314 NLRB at 158 fn. 7.

leave requests involves the exercise of independent judgment. An employee's eligibility for leave is determined by Gingell, subject to final approval by an admitted statutory supervisor. Contrary to the dissenting opinion, there is no evidence that a processor has ever refused to sign a leave request, that a processor has the authority to do so, or that a processor's refusal would bar an employee from obtaining leave. Accordingly, we find that the processors' perfunctory role in signing leave requests does not indicate that they have supervisory authority within the meaning of Section 2(11).

Similarly, we find no support for the hearing officer's finding that processors exercise independent judgment in disciplining employees. The record reflects that the processors have signed warning forms for absenteeism, and in two instances, have produced written reports of employee misconduct. Regarding the warnings for absenteeism, the record is clear that processors merely act as conduits, relaying to employees written warnings which have already been approved by Human Resources Manager Shelly. Shelly testified without contradiction that when an employee fails to show up for a scheduled shift, clerical employee Sam Sehnert investigates whether the absence is excused and determines how many points, on a preset scale, the employee has accumulated for unexcused absences. Sehnert then prepares and signs a written warning and forwards it to Shelly for approval. Shelly rechecks the employee's time records to verify that the absence is unexcused and to verify the number of points the employee has accumulated. She then forwards the warning to the employee's supervisor, or if the supervisor is not available, to a processor. The supervisor or processor signs the warning and distributes it to the employee. Sehnert is also present when the warning is distributed to answer questions about the Employer's attendance policy.

The record also shows that, on two occasions, processor Billy Thomas produced written reports of employee misconduct. Although Thomas' reports contained no recommendation of discipline, the employee involved in both instances received written warnings for violating company rules. Human Resources Manager Shelly prepared and signed the written warnings. The warnings were also signed by the employee's undisputed supervisor, but they were not signed by Thomas.

Shelly, Plant Manager Hibbler, and the processors' direct supervisor, Kraig McInally, testified that Shelly independently investigates all reports of employee misconduct before determining whether to issue discipline. The hearing officer specifically credited Shelly's testimony that she is the individual responsible for administering the Employer's disciplinary policy. He nevertheless found Thomas (and, by corollary, all other processors) to be a supervisor because, in his view, the nature of the incidents reported by Thomas indicated that Thomas exercised supervisory authority over the employee involved. We disagree. The first incident reported by Thomas came about when Thomas asked operator Gary McComb to move to another machine while Thomas adjusted the machine McComb was working on and McComb replied, with an obscenity, that he was not going to do it. The second incident came about when McComb asked Thomas to move him to another machine because his arm hurt and then subsequently left work without notifying Thomas before Thomas was able to accommodate his request. We note that both incidents occurred on a weekend and the record indicates that Thomas may have been substituting for a supervisor on those occasions. Even assuming, however, that Thomas was acting in his normal capacity as a processor, we find that his incident reports do not warrant the conclusion that he is vested with statutory supervisory authority. As noted above, the incident reports contained no recommendation by Thomas with respect to discipline, and the record established that it was Shelly, and not Thomas, who determined whether to impose discipline. Under these circumstances, we find that Thomas' role is merely to report incidents and does not amount to statutory supervisory authority. See *Ten Broeck Commons*, 320 NLRB 806, 812 (1996).[4]

The hearing officer also relied on the fact that the warnings prepared by Shelly referred to Thomas as a supervisor. We also are not persuaded that Shelly's use of the title "supervisor" in referring to Thomas in the written warnings requires a finding that he and other processors are statutory supervisors. It is well established that rank-and-file employees cannot be transformed into supervisors merely by being invested with that title; rather, an individual's actual powers, duties and responsibilities control. *NLRB v. Wilson-Crissman Cadillac,* 659 F.2d 728, 730 (6th Cir. 1981); *Hallandale Rehabilitation Center*, 313 NLRB 835, 836 (1994); *Transit Co.*, 114 NLRB 617, 618–619 (1955).

The hearing officer also relied on evidence that processors sign requests for maintenance or tool repair and parts status reports to support his conclusion that they are supervisors. There is no evidence that the preparation or signing of these forms involves any independent judgment or discretion with respect to employee assignment or direction of work. We therefore find that completing these forms is merely a ministerial act which does not endow them with statutory supervisory authority.

In concluding that the processors are supervisors, the hearing officer also relied on evidence that the processors substitute for acknowledged supervisors on the weekend

[4] The dissent contends that an individual can effectively recommend discipline, within the meaning of Sec. 2(11), without recommending the specific degree of discipline to be imposed for reported misconduct. The record here, however, indicates that Thomas did not recommend discipline at all. He merely *reported* alleged misconduct, leaving matters of investigation and the determination of appropriate disciplinary action entirely to the initiative and discretion of others.

and during slow periods. The appropriate test for determining the status of employees who substitute for supervisors is "whether they spend a regular and substantial portion of their working time performing supervisory tasks." *Latas De Aluminio Reynolds*, 276 NLRB 1313 (1985); *Hexacomb Corp.,* 313 NLRB 983, 984 (1994); *Gaines Electric Co.,* 309 NLRB 1077, 1078 (1992); *Canonie Transportation*, 289 NLEB 299, 300 (1988). In this respect, we find that the hearing officer greatly overstated the frequency with which processors substitute for regular supervisors. The record establishes that processors substitute for admitted statutory supervisors only during one shift on Saturdays and Sundays, and during a 1-week slowdown period each year.[5] Assuming the substitution is evenly distributed among the processors, each of the Employer's 11 processors spend less than four percent of their annual working time substituting for statutory supervisors. Therefore, even assuming that the processors exercise statutory supervisory authority when substituting, we find that this occasional assumption of supervisory duties is too insubstantial to transform what are otherwise rank-and-file employees into statutory supervisors. See *Quality Chemical, Inc.*, 324 NLRB 328, 331 (1997).

Finally, the hearing officer relied on certain secondary indicia of supervisory authority. In the absence of primary indicia as enumerated in Section 2(11) of the Act, secondary indicia are insufficient to establish supervisory status. See, e.g., *SDI Operating Partners*, *L.P.*, 321 NLRB 111, 112 fn. 2 (1996); *Northcrest Nursing Home*, 313 NLRB 491, 498–500 (1993). In any event, we find that secondary indicia do not support a finding of supervisory status. The hearing officer stated that the processors are among the highest paid employees in the unit. We note, however, that the processors are paid less than maintenance employees, whom the parties agree are eligible to vote. Moreover, other secondary indicators of supervisory authority militate against a conclusion that the individuals are supervisors. Thus, the processors are paid on an hourly basis and receive no incentive bonuses, whereas the acknowledged supervisors are paid on a salary basis and participate in a bonus pool. Additionally, the processors punch a timeclock like the conceded nonsupervisory employees. Further, the processors do not attend management meetings, whereas the acknowledged supervisors do. These factors are supportive of the Employer's argument that the individuals are leadmen, as opposed to supervisors.

In sum, we conclude that the Petitioner has not met its burden of establishing that the processors are supervisors as defined in the Act. As both the Board and the courts have recognized, an employee does not become a supervisor merely because he or she has greater skills and job responsibilities than fellow employees or because he or she gives some instructions or minor orders. *NLRB v. Lauren Mfg.,* 712 F.2d 245, 248 (6th Cir. 1983); *Chicago Metallic Corp*., 273 NLRB 1677, 1689 (1985), enfd. in relevant part 794 F.2d 527 (9th Cir. 1986). The decisive factor is whether the employee possesses the authority to use independent judgment with respect to the exercise of one or more of the specific authorities listed in Section 2(11). Id. In analyzing the processors' role in assigning work, granting time off, and disciplining employees, we have found that in each instance the authority exercised does not involve the use of independent judgment, but rather involves routine decisions typical of leadman positions and other minor supervisory employees that are found by the Board not to be statutory supervisors. See, e.g., *Hydro Conduit Corp.,* 254 NLRB 433 (1981); *Jordan Marsh Stores Corp.*, 317 NLRB 460, 467 (1995); *North Shores Weeklies*, 317 NLRB 1128 (1995); and *Brown & Root, Inc.,* 314 NLRB 19, 21–22 (1994). We find further that the processors' infrequent substitution for undisputed supervisors is insufficient to clothe them with supervisory authority.

Accordingly, we overrule the challenges to the ballots of Kathryn Clark, Edward Jay Fitfield, Richard Glenn, Mark Lieber, Mark Mitchell, Jeffery Rude, Russell Rutherford, Martin Schlak, Jeffrey Springsteen, Bradley Stanley, and Billy Thomas, and shall direct that their ballots be opened and counted.[6]

DIRECTION

IT IS DIRECTED that this proceeding be remanded to the Regional Director for Region 7, who shall, within 14 days from the date of this Decision and Direction, open and count the ballots of Valerie Chambers, Kathryn Clark, Vicki Ann Coon, Edward Jay Fitfield, Lynette Germaine, Richard Glenn, Mark Lieber, Mark Mitchell, Jeffery Rude, Russell Rutherford, Martin Schlak, Jeffrey Springsteen, Bradley Stanley, Billy Thomas, and Tina Turner, serve on the parties a revised tally of ballots, and issue the appropriate certification or, if the challenged ballots of Earl Harmon and Brian Lightner remain determinative, transfer this case to the Board for final resolution of those challenges.

MEMBER HURTGEN, dissenting.

My colleagues have reversed the hearing officer's well-supported findings that the 11 processors are supervisors.[1] I would adopt the hearing officer's findings. I therefore dissent.

[5] The record does not support the hearing officer's finding that processors substitute for supervisors during all three shifts on Saturdays and Sundays.

[6] We shall hold in abeyance the challenges to ballots cast by Earl Harmon and Brian Lightner, and we will resolve those challenges only if they remain determinative after the revised tally of ballots.

[1] The term "processors," as used herein, refers to the 10 processors and the process engineer.

It is not necessary to repeat the findings of the hearing officer. I shall only respond to the majority's challenges to those findings.

1. Assignments

It is undisputed that the original assignment to a machine is made by an admitted supervisor. However, processors have the authority to direct an operator to move to another machine (i.e., to change the assignment). In my view, if the original assignment is an act of supervision, it is inconsistent to say that a subsequent assignment (essentially undoing the first one) is not an act of supervision. My colleagues do not adequately explain the inconsistency. They only say that the subsequent action is based on "common sense efficiency and job priorities set by the Employer." Of course, the "common sense efficiency" exists in the mind of the person who effectuates the action, i.e., in the independent judgment of the processor. There is no instruction from above, and no "job priority," that would tell the processor how to exercise that judgment. In sum, this independent reassignment is a clear indicium of supervisory status.[2]

2. Discipline

The processors also exercise supervisory authority with respect to discipline. Interestingly, the evidence of discipline stems from employee refusals to follow a processor's order to move to another machine (precisely the directive that is an indicium of supervisory authority). My colleagues say that the processor's role is not supervisory because the decision to discipline is made by someone else (Shelly). However, Section 2(11) covers the authority to discipline *and* the authority to recommend discipline. In the instant case, the processor recommended to Shelly that discipline be imposed because the employee would not obey the processor's directive.

I recognize that Shelly may perform some independent inquiry before deciding on whether to discipline the employee. However, this is not inconsistent with the fact that the processor makes a recommendation. The decision-maker is not a rubber stamp and therefore one should expect some independent thought on his/her part. Finally, the fact that the word "recommend" did not appear on the form sent to Shelly does not itself contradict the fact that a recommendation was made.[3]

3. Requests for leave

The processors also play a role in granting requests for leave. The employee submits a request to the processor. *If the processor agrees*, he will sign it and forward it for further handling. That is, a clerical must check to see if leave is available, and another person must decide upon "final approval." However, the initial approval comes from the processor. There is no suggestion that he is required to give that approval. And, there is no credible evidence to support my colleagues' suggestion that the processor's signature connotes only the date of receipt. Indeed, the hearing officer found this to be inherently improbable.

4. Conclusion

Inasmuch as processors have powers with respect to assignment, discipline and time off, and inasmuch as any one of these would give supervisory status, I conclude that the processors are supervisors.

[2] Contrary to the statement of my colleagues, I do not assert that the processors have "unlimited" authority to change an assignment. And, although the record establishes only several such assignments, this clearly bespeaks, at least, the authority to make such assignments.

[3] My colleagues assert that the processor makes no recommendation. However, the record evidence establishes that the processor reports employee misconduct to Shelly, and that Shelly then decides upon the determination of appropriate discipline. In these circumstances, the report is understood to be a recommendation to Shelly, and he acts upon it as such.